

At

TWO
POINTS
OF
GREAT MOMENT,
THE
Obligation of Humane Laws,
AND
The Authority of the Magi-
strate about Religion
DISCUSSED.

Together, with the Case which
gave Occasion to the first Point.

In Opposition to the Two Au-
thors, of the *Friendly Debate*, and of
the *Preface* to a late Book of Bishop
Bramhall.

By J. H. *Hammond*

Μηδὲν ἄγαν κατὰ κρίσιν

Printed Anno Domini, 1672.

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John Rowley Hemmingford /
TO THE

BOOKSELLERS.

SIRS,

BE not Offended, that I have Printed the late Book, A Rebuke to the Prefacer my self: for it being against one of your Licencers, none of you durst do it. I had reserved some of the former Book, The Obligation of human Laws, in Quires, for such a purpose as this. I have Corrected them with my own hand, and Printed the sheet called The Case, which was seized, for this end only, to be Bound up with these remaining Copies. I intend to give part of them to my friends, and have but Sixty or Seventy to sell. If the Buyer gives you not your first price, raise it at next Asking: for they are not like, in all these Circumstances, to get one of them again upon any Terms. The Price of these few must be to You 20. d. to the Buyer 2. s.

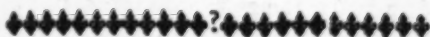
The Author.

Life of



of
the
Rev.
John
W.
Hart
D.D.
of
the
University
of
Cambridge
and
of
the
Church
of
England
by
John
W.
Hart
D.D.
of
the
University
of
Cambridge
and
of
the
Church
of
England
in
two
volumes
Vol. I.
London
Printed
by
Longman
Brothers
and
Co.
1851

By the same Author, in the same Series, Vol. II.
London
Printed
by
Longman
Brothers
and
Co.
1851



The Case.

WHether a Non conformist, before the **KINGS DECLARATION**, who hath not taken the *Oxford Oath*, might come to Live at *London*, or at any Corporate Town, or within Five Miles of it, and yet be a good Christian?

How can that man be a Minister of Christ, who is disobedient to his Sovereign? And that, even in those things wherein Christ and his Laws are not concerned. The Law of the Land forbids the Nonconformist to live in London, or within five miles of it: But that is not repugnant to the Command of Christ, and therefore he is not a good Subject, and consequently not a good Christian; much less such a Minister of Christ as he ought to be. The Friendly Debate between the Conformist and Nonconformist.

By this one Passage in that Book, I did take my Conjecture of the Author, to be a person happy in his Expression, and ingenious in his Disposition, rather then

deep in the Things he delivers, or studious and *reflective* on those more *Removes* than one, he ought to see, who will play such a Game as this at once with all the Non-conformist Ministers in the Nation. To bind the observation of all human Laws (not sinful in the Fact) upon the Conscience, without distinction, is the doing he knew not what. An unmerciful Determination ! which being passed too upon that particular *Oxford Act*, engaged me upon this point, as seeming to me the most material to be considered of any in the Book, both in regard of the loss the most were at what to Answer, and the necessity of their Satisfaction : seeing if we act not in Faith in what we do, we sin. The Paper, besides some little more in the preamble then this, was as follows.

I am sorry that any Person of so much candour, latitude, and ingenuity, as I believe the Writer of this Book to have, should be so unkind to his Brethren, so unconscionably untender (to express the thing as it is) as to account, That no man who transgresses an Act of Parliament (such as for the *Nonconformist* to come within five miles of *London*) can be a good Christian. Alas ! how precise are some men, as
to

to the Law of the *Land*, who are yet so angry at others for being strict to the *Laws of God*? But does this Reverend Person indeed think, that every transgression of a Statute of the Realm is no less than a *deadly sin*? Or dare he wilfully *judge* here, any otherwise than himself would be *judged*? What then if a man shall live and die in the breach of many Statutes, which he knows, and yet thinks nothing of it, must such a one be certainly damned? Or may a man live and die in a wilful known sin, without Repentance, and be saved? *Too rigorous were it* (sayes Mr. *Hooker*, that understood himself here no doubt a little better) *that the breach of every Law should be so held; a Mean there is between these extremities, if so be we could find it out.* I must confess I have not read any, to my remembrance, that have ventured on the chalking out this *Mean*, that I should gather satisfaction from it; so that I must content my self with my own Sentiment, which I shall readily deliver, being glad at my heart if I can unloose any *burden*, which many that are tender may be apt to *bind* on their *Consciences*, when some that tye the same, would be loth to touch them with their *little fingers*.

The Magistrate I account with the A-

Apostle, is the *Minister of God* for the Peoples good. If he command in order to that end, I think his Commands ought to be obeyed, not only for *fear* of his Sword, but for *Conscience sake*: But if he command any thing for the Peoples hurt, or that which evidently is not for their good, I think his Command (if the matter be not sin) is yet to be obeyed for *Wrath sake*, and so not to be *contemned*; but I think not any obligation lyes on the *Conscience*, if it can be avoided without contempt or scandal, that it should be *done*. We must distinguish here between the authority that resides in the *Person*, and the authority of this or that his *particular Command*. I do apprehend, that when any *Command* or *Law* does require *that*, which is *Morally* or *Civilly* evil, every such *Command* or *Law*, is really divested of authority, and so may be left undone without breach on a man's *Conscience*; yet if a man be brought to question about it, he must suffer, because the authority which resides still in the *Person* must be submitted to, as to the *Ordinance of God*. He must not *resist*, that is express; and rather than *resist*, he must *suffer*; whereas if he could avoid it without *resistance*, he was not bound in good earnest,

earnest, either to *do* or *suffer*. Where we are not obliged *ad agendum*, *ad patiendum* sayes Grotius, *tum demum ubi parva evitari nisi vi opposita non potest. De Imp. sum. pot. & res. Jac. p. 98.*

The reason of this at the bottom, lyes here, and is firm. Power in the *Magistrate*, or *Civil power*, which is the ground of subjection, does not lye in *might*, strength or force, but in *right*. *Potestas* (say Political writers) is *jus imperandi*. This *right* in the nature of the thing must arise from the *Grant* or *Will* of the supream Lord, which is God, without whose *Will* (or that *Grant*, or *Charter*, which is an act of his will) no Power can be derived to any. Now that *grant* or *will* of God, which constitutes any to Rule, or to be his *Minister*; being for the Peoples *weale* (He is the *Minister of God for our weale*, sayes the text); it must follow, that whatsoever is not indeed for the Peoples *weale*, the Magistrate is not to command, because it is God's will that he commands only for their *weal*. And if he do command any matter that is otherwise, that Command hath no Authority as to the *Conscience* at all, as being without the warrant of God's will. This is such
 Doctrine

Doctrine, which is plain, bottom'd, and irrefragable; *He is the Minister of God for thy good, saith St. Paul, otherwise he is not God's Minister, and hath no other purposes none of God's power.* Dr. Taylor in his Cases, l. 3 p. 35. *Quod necessariam non habet conjunctionem cum fine publici commodi non potest præcipi lege humana,* sayes Suarez from the Schools.

One difficulty onely there is, which is this: Who shall judge whether a Law be for the peoples *Weal*, or not? I answer, The Magistrate must judge as to the *Making* the Law, and we must judge as to our *Obedience* to it: My Reason I give as readily, Because God hath made every man the Judge of his own Actions, and consequently of all the Circumstances, whether they are agreeable, or not agreeable to his will, for his forbearance, or doing of them: so that it is not according to the resolution of any others Conscience, but of his own, or the Judgement of *Private Discretion*, he shall be justified, or not justified in his walking before him. Let a Law then be promulgated wherein a man is concerned, I thus determine: If he deal uprightly, that is, as a *Christian*, (to use industriously this persons word) and in his Conscience
does

does judg that the Law is *good*, I mean good for the general (whether their spiritual or temporal good), I do apprehend he is obliged in Conscience to the obeying that Law, (at least so far as his particular obedience is conducive to that good) though the keeping of it otherwise be to his own disadvantage or private loss. If he judges it *not good*, I do suppose he may do well in prudence to be wary, and do perhaps as others do, and not run himself into harm's way : But really if he observes it not, he is to make no Conscience of it, as if the thing offended God, whether he does it, or leaves it undone. And here is that very *Mean* indeed it self, for ought I know, *quod desideratur*. To wit, That the Laws or Commands of the Magistrate (even in political and indifferent things) does no less than *bind the Conscience*, when he is the Executioner of *Gods Will* : But though the *Outward man* (out of the case of sin) may be bound, if you will, the *Conscience*, cannot be obliged, and ought to be still kept free, when he is the Executioner only of his *Own Humane Laws* (says the fore-mentioned excellent Doctor and Bishop) *bind the Conscience of the Subjects, but yet give place to just and charitable Causes : Which are competent*

petent and sufficient, is not expressly and minutely declared, but it is to be defined by the moderation and prudence of a good man.

I know not how this Author may receive this, from whom I expect more ingenuity than from many others: that is, to yield to second considerations. But methinks, if he had not thought at first (when he wrote) of any thing besides, he might at least have considered that there be Laws, which of themselves grow out of date; and that it is not Time so much that brings on them their decay, as the apprehension of them to be unreasonable, unfair, or unprofitable to the Land. When a Law therefore is by general tacit allowance, and practise of the Nation, had no longer in regard, it is to be accounted as *virtually obsolete*, and so it binds not. There was a Law made this Parliament about *Carts & Waggon*s, for the better keeping the *High-ways*; which being found quickly inconvenient to the *Waggoners*, & unanswerable we may suppose to the *End*, it was scarce a Month or two, but they heard no more of it. I will put a Case now of Conscience to this Person, Suppose a man whose living consists in his Waggon, and unless he puts more Horses in his Team, in his coming up to *London*, than this Law will

will allow, he must give off his Trade, or be undone. I ask, What shall this fellow do? By the Doctrine of this Book, for ought I can see, he can be *no good Subject, and consequently no good Christian*, if he goes on. I will ask again, What thinks the Author of those that die and are buried in the *iniquity of Linnen*? Whether the Women generally of this Nation who cannot abide to have the *dead* wrapt in *Flannel* (but being used so much to controul their *Husbands at home*, will not be ruled by *both Houses*, to do any otherwise herein than what they think is *handsomest* for all them), are in capacity, without their amendment in this point, to be saved? For my own part, I think verily the latter of these Laws being intended, and tending directly to the particular good of the Nation, it ought in Conscience to have been kept: yet seeing the very *humour* only of the Women hath discountenanc'd it, so that in the general usage it is annull'd, I dare not say that any man does sin, that observes it not. I dare not say, that *Wife* can be *no good Christian* that buries here *Husband* in his *shirt*.

As for the Act it self of *Oxford*, I cannot pass methinks, without the observation of God's providence, toward that great
Per-

Person, who in his Speech that Session, so industriously declared himself the Designer : Since the Parliament at Oxford, it hath been visible (sayes he) that my credit hath been very little. He who had contrived the Banishment of others from their houses by that Act, leaves this passage in his Letter, at his own departure out of the Rea'm.

For the Oath imposed, as the condition of the *Nonconformists* lawful coming to this City, or any other Corporation, by that Oxford Act, there are the *Nonconformists* Exceptions against it proposed in that Book entituled, *A Defence of the Proposition*. If the Author of this Debate, or that ingenious Person, who (they say) is writing something about *Ecclesiastical Polity*, for the justifying present Impositions; or that worthy Person his associate, who is particularly engaged to it, can Answer them, let them try. This I must say, that I suppose the chief of those things which stick in good earnest upon the sober *Nonconformist*, and which others do not, or dare not speak out, are there offered, against that Oath, and against *Uniformity*. If they shall set down the words fairly and candidly, and answer them satisfactorily, they

they shall do well: But if they *do not* (after this notice) the world shall account indeed they *cannot*, and what they say otherwise, must signifie nothing. I will conclude with *Grotius*, and return to my Theme. *Leges humane vim obligandi tum demum habent, si late sint ad humanum modum, non si onus injungant quod a ratione & natura plane abhorreat.*

If you ask at last, How this Sheet comes out thus alone without others against this Debate with it? I must say, What shall a man do, when the Press is become so like the Hedge-hog's Den, that when they have one door open still for themselves, they will be sure to stop the other, where the least wind can but come in to blow upon them.

F I N I S.

☞ This should be put at the end of the ensuing Book.

THe Office (to wit, of the Magistrate): and exercise or administration being distinguished, you truly say, that he that is not bound in a particular case to obey, yet may be a Subject still (which is the relation of one bound to ordinary obedience); and Rebellion which is the casting off this subjection, is
for-

forbidden notwithstanding a particular law may be disobeyed.

A Law made against God or the safety of the Common-wealth, is no Law in sensu univoco, but it is in sensu æquivoco vel analogico, and does not properly bind the Subject.

All men in their wits (that are masters of such discourse) are agreed that, Judicium est vel publicum vel privatum. Publicum est vel Civile, Magistratus, per gladium exequendum: Vel Ecclesiasticum, Pastorum, per verbum & claves exequendum. Et privatum discretionis, est omnium. No Man ever obeyed without it, for authoritas imperantis agnita, is the objectum formale obedientiæ, and answereth the question, Quare obedis?

The Magistrate being by Office intrusted with the bonum publicum, the Subject is not called to try every one of his Laws, whether they are suited to the bonum publicum or not, much less to be critical and busie out of his place.

But being not bound to be blind or careless in a notorious case, or such of which he hath full and lawful cognizance, he may and must discern what command is against the common good.

Richard Baxter.